

## **Brief outline of the Non-profits entities regime in Colombia**

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For easy reference this document will be divided in the following chapters:

- a. Chapter I – Legal introduction to non-profit entities in Colombia.
- b. Chapter II – Creation and registration of a foundation as an independent entity in Colombia.
- c. Chapter III – Surveillance of the State.

### **1. Legal introduction to non-profit entities in Colombia.**

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- 1.1. Pursuant to Colombian legislation, non-profit entities are legal entities incorporated for the achievement of a purpose determined by its founders.
- 1.2. In accordance with the Colombian Civil Code, non-profit entities are corporations or foundations which seek the fulfillment of public interests. In light of this, a corporation is a legal entity incorporated by individuals and its main purpose is the physical, intellectual or moral welfare of its members, whereas, on the other hand, foundations of public beneficence when formed depend on the assets assigned by its founders to a particular or given purpose. The foundation shall exist independently from its founders and seek the protection of a public interest and, therefore, will endeavor in activities of general interest such as; health, sport, education, science or technology research, among others, which benefit the community or an undetermined group of individuals.
- 1.3. Furthermore, it is important to distinguish that the main characteristic of non-profit entities, disregarding the fact that they are either a corporation or a foundation, is the absence of a purpose to seek profit for its founders or members, even if they undertake economic activities whereby a profit for the legal entity is included.

### **2. Creation and registration of a foundation as an independent entity in Colombia.**

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- 2.1. Creation of the entity
  - 2.1.1. Three main aspects are to be considered in the process of incorporation and operation of a non-profit legal person: (a) documents of incorporation, (b) registration with the Chamber of Commerce of the domicile of the non-profit entity and, (c) supervision by the State.
  - 2.1.2. Although some specific non-profit entities will need some additional requirements, we will mention the general procedure of incorporation of all and any non-profit entities in Colombia.

- 2.1.3. The documents of incorporation shall consist on (i) the incorporation agreement, (ii) the drafting of bylaws, which in compliance with applicable law shall be in writing, either in the form of a private document or a public deed depending of the will of the founders and (iii) the acceptance letters of the appointed directors / managers and statutory auditors and image of their IDs.
- 2.1.4. The incorporation of a non-profit entity is based upon an incorporation agreement intended to create a different legal person from that of the founding members. This document must be executed by all of the founding members of the legal entity and shall contain the date and city of the where the meeting of its creation took place, the name, identification and domicile of each one of the forming members of the entity, the indication of the purpose of such document which is the incorporation of a non-profit entity, the bylaws of the nonprofit entity, and the appointment of directors, managers and statutory auditors, if it should be the case.
- 2.1.5. This act shall be subject to the general rules of Colombian legal acts according to which the founders must be legally able to form legal entities and the purpose of the nonprofit entity must be legal and in accordance with good customs.
- 2.1.6. In addition, the bylaws of the entity as an essential element in the incorporation of a non-profit entity sets forth the structure of the same and includes the following matters of utmost necessity in the operation of the entity:
- a. Name of the non-profit entity.
  - b. The nature of the legal entity: It means the mention of being a non-profit entity.
  - c. The purpose of the legal entity.
  - d. The net worth and the way to contribute to it.
  - e. Organization: direction, management and representative bodies. The founding members are free to choose which bodies will be in charge of the direction, management and representation of the legal person and the faculties of each of these bodies.
  - f. Ordinary and extraordinary meetings of the entity bodies, including frequency, summons and quorums of the meetings.
  - g. Term and dissolution events.
  - h. Liquidation proceeding.
  - i. Domicile of the non-profit entity.
  - j. Name and identification document of administrators and representatives of the entity.

## 2.2. Registration of the entity:

- 2.2.1. Pursuant to the existing Colombian legislation and practice, as a general rule<sup>1</sup>, the act of incorporation along with the foundation bylaws and acceptance letters (with the ID

<sup>1</sup> Other non-profit organizations are subject to registration with other governmental entities, such as, education institutions, religious institutions, etc.

documents) shall be formalized by means of a public deed issued by a Public Notary and subsequently be registered in the local Chamber of Commerce, with jurisdiction in the domicile of the non-profit entity, which consequently shall grant a certificate of existence and legal representation from which the existence of the legal personality will be conceived.

- 2.2.2. Please note that the Chamber of Commerce will not record a non-profit entity which has the same name of an entity previously recorded.
- 2.2.3. In addition to the incorporation documents, a non-profit entity shall record behalf the Chamber of Commerce the following books, according with the legal requirements for it: (i) minutes book of the administration body and (ii) accounting books.

### **3. Surveillance of the State.**

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- 3.1. Upon incorporation, non-profit entities are subject to the surveillance of the State. Therefore, depending on the activity developed and the domicile of the non-profit entity, this shall be supervised by the governmental authority which has inspection and surveillance faculties in connection with it.
- 3.2. As a general rule, exercising the surveillance faculties regarding to non-profit entities, the State is empowered to:
  - a. Carry out inspection visits to the entity.
  - b. Request information and documents whenever it is necessary.
  - c. Review documents, bylaws, books and minutes of the entity.
  - d. Request accounting information.
  - e. Impose the cancellation of the non-profit entity registry or the amendment of its bylaws whenever they are contrary to Colombian legislation.
  - f. Perform all activities in connection with the faculties herein indicated.
- 3.3. Regarding the surveillance, please note that a non-profit entity domiciled in Bogota, should send the following information to the Mayor's Office once its registration with the Chamber of Commerce is completed: incorporation document, bylaws, certificate issued by the Chamber of Commerce, initial balance sheet, certificate of the registered books, draft of budget applicable to the current fiscal year.

Please do not hesitate to contact us should you have any question regarding this matter.

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